

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Caitlin Schwartz	Team: Team # 3	CCRB Case #: 201404763	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 05/09/2014 8:25 PM	Location of Incident: Sutter Avenue and Stone Avenue	Precinct: 73	18 Mo. SOL 11/9/2015	EO SOL 11/9/2015	
Date/Time CV Reported Fri, 05/09/2014 10:35 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 05/15/2014 6:36 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Wilson Alba	09921	936109	PSA 2
2. POM Jason Broderick	27575	945528	PSA 2

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jonathan Calderon	08217	947724	PSA 2
2. SGT Colin Delaney	00000	930019	PSA 2

Officer(s)	Allegation	Investigator Recommendation
A.POM Wilson Alba	Force: PO Wilson Alba used physical force against § 87(2)(b)	
B.POM Wilson Alba	Discourtesy: PO Wilson Alba spoke rudely to § 87(2)(b)	
C.POM Wilson Alba	Force: PO Wilson Alba used physical force against § 87(2)(b)	
D.POM Jason Broderick	Force: PO Jason Broderick used physical force against § 87(2)(b)	
E.POM Wilson Alba	Abuse: PO Wilson Alba threatened § 87(2)(b) with the use of force.	

Case Summary

On May 9, 2014, at 8:08 p.m., Sgt. Colin Delaney, PO Wilson Alba, PO Jason Broderick and PO Jonathan Calderon, all of PSA 2, conducted a directed patrol at Sutter Avenue and Stone Avenue in Brooklyn. While the officers stood at that intersection, § 87(2)(b) approached them and complained about a summons that he had previously been issued (not by any of the aforementioned officers). § 87(2)(b) argued with the officers, and used profanity. At 8:25 p.m., PO Alba arrested § 87(2)(b) for § 87(2)(b) (encl. X). § 87(2)(b) was escorted to the police van, and said that he needed help getting into the van due to a pre-existing leg injury. It is undisputed that PO Alba punched § 87(2)(b) in the face, but the number of times that PO Alba punched him remains in dispute (**Allegation A**). § 87(2)(b) alleged that as PO Alba told him to get in the van, he called him an “asshole” (**Allegation B**). § 87(2)(b) also alleged that officers threw him into the van, and his face hit the van’s floor, causing his bottom teeth to cut into his lower lip (**Allegations C and D**). Once § 87(2)(b) was in the van, PO Alba allegedly told him, “I’m gonna ride you around and I’m gonna beat your ass” (**Allegation E**). § 87(2)(b) was transported from the 76th Precinct stationhouse to § 87(2)(b) for medical treatment, where he received stitches for a laceration he sustained on his lip.

Mediation, Civil and Criminal Histories

- § 87(2)(b) s arrest and the injuries he incurred made this case unsuitable for the CCRB’s mediation program.
- On March 5, 2015, an inquiry was made to the NYC Comptroller’s Office regarding whether § 87(2)(b) has filed a notice of claim regarding this incident. The results will be included in the case file upon their receipt.

- § 87(2)(b), § 87(2)(c)
§ 87(2)(b)
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§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is § 87(2)(b) s first CCRB complaint (encl. 2D).
- PO Alba has been a member of the NYPD for ten years, and has 18 CCRB allegations against him, involving eight cases. Eight of the 18 allegations are force allegations that were closed with various dispositions. PO Alba has no substantiated CCRB allegations against him (encl. 2B-C).
- PO Broderick has been a member of the NYPD for seven years, and has 30 CCRB allegations against him, involving 12 cases. Among these allegations, there are none substantiated § 87(2)(g) (encl. 2A).

Potential Issues

- Since the occurrence of this incident, PO Alba has been promoted to the rank of sergeant.
- Since the occurrence of this incident, Sgt. Delaney has been promoted to the rank of lieutenant, and transferred to the 88th Precinct.

Civilian Statements
Complainants/Victims

§ 87(2)(b) (Encl. 3A-H)

- On June 16, 2014, § 87(2)(b) was interviewed at the CCRB (encl. 3B-F).
- § 87(2)(b) is 6'3" and 240 pounds. He injured his leg in a car accident in 2010. He admitted to consuming one beer prior to this incident, and described himself as mildly intoxicated during it.
- § 87(2)(b) approached the officers to complain about a summons he had recently been issued, and admitted to cursing when speaking to the officers. § 87(2)(b) also described a moment at the beginning of his interaction with PO Alba when they "exchanged a few words," during which § 87(2)(b) said, "You faggot," which he claimed he said out of frustration rather than to PO Alba. PO Alba approached him and told him that he was being "wise" by using the word "faggot," and that he was under arrest. § 87(2)(b) was then handcuffed.
- § 87(2)(b) asked for help getting into the police van due to the prior injury to his leg. PO Alba complained that § 87(2)(b) had been able to ride his bike, but was now asking for help getting into the van. As an officer, identified via investigation to be PO Broderick, helped § 87(2)(b) into the van, PO Alba punched § 87(2)(b) the face three times consecutively. PO Alba swung at § 87(2)(b) more than three times, but only three punches landed. PO Alba punched him twice in the lip, and once just above his right ear. PO Alba also called § 87(2)(b) an "asshole" while telling him to get in the van.
- § 87(2)(b) also said that PO Alba and PO Broderick threw him into the van, causing his mouth to hit the floor, and his bottom teeth to cut into his lower lip. The chronology of § 87(2)(b)'s account was not entirely clear, but he seemed to indicate that the officers threw him into the van after PO Alba punched him.
- PO Alba also told him, "I'm gonna ride you around in the van, and I'm gonna beat your ass."
- § 87(2)(b) sustained a laceration to his lip, for which he received four stitches at § 87(2)(b)

Witnesses

§ 87(2)(b) said that his wife, § 87(2)(b) and her friend, whose name and contact information he did not know, witnessed the incident. § 87(2)(b)'s friend was never identified by the investigation. § 87(2)(b) reported that § 87(2)(b) did not have a permanent address at the time, but provided a phone number for her. On July 7, 2014 and July 21, 2014, upon contacting § 87(2)(b) at this number, the investigator received a message that she was unavailable, and could not leave voicemails. On July 18, 2014, § 87(2)(b) was mailed a please call letter at § 87(2)(b)'s address. This letter was not returned to the CCRB marked as undeliverable. On August 28, 2014, § 87(2)(b) contacted the investigator and left a voicemail requesting a call back at § 87(2)(b)'s number. On October 22, 2014, § 87(2)(b) was contacted at § 87(2)(b)'s number and the number § 87(2)(b) provided for her, and left a voicemail on § 87(2)(b)'s number requesting a call back from him or § 87(2)(b). On October 27, 2014, § 87(2)(b) called the investigator while he was with § 87(2)(b) who also spoke to the investigator. § 87(2)(b) informed the investigator that they did not have a lot of minutes on their phone, so they had to keep the conversation brief, so § 87(2)(b) was not asked to provide a detailed phone statement. However, an appointment was scheduled for her to be interviewed at the CCRB on November 3, 2014. § 87(2)(b) did not appear for this previously scheduled appointment, and did not call beforehand to cancel or reschedule. On November 6, 2014, § 87(2)(b) was contacted at § 87(2)(b)

§ 87(2)(b)'s phone number and left a voicemail requesting a call back to reschedule her CCRB interview. Also on November 6, 2014, § 87(2)(b) was mailed a missed appointment letter at § 87(2)(b)'s address. On November 10, 2015, § 87(2)(b) contacted the undersigned investigator and left a voicemail apologizing for her missed appointment, and suggesting that it be rescheduled for November 12, 2014 at approximately 4 p.m. Also on November 10, 2014, the investigator called § 87(2)(b) and left a voicemail informing her that the suggested appointment time worked, and requesting a call back to confirm the appointment. § 87(2)(b) did not call back to confirm the appointment, and did not appear at the CCRB on November 10, 2014 to be interviewed. On November 28, 2014, § 87(2)(b) contacted the investigator and apologized for missing her November 10, 2014 due to a death in the family. Her CCRB interview was rescheduled for December 3, 2014 at 2 p.m. However, § 87(2)(b) missed this third appointment, and did not call beforehand to cancel or reschedule.

NYPD Statements

Subject Officer: PO WILSON ALBA (Encl. 4A-E).

- On January 16, 2015, PO Alba was interviewed at the CCRB (encl. 4D-E).
- When § 87(2)(b) approached the officers to complain about the summons he had been issued, he appeared angry and cursed at the officers. Sgt. Delaney and PO Alba, and possibly the other officers, asked § 87(2)(b) to leave the area about six or seven times, but he refused to leave. § 87(2)(b) remarked that he should go to his car and get a pistol. The incident prompted the formation of a crowd of about six to eight people.
- PO Alba placed § 87(2)(b) under arrest for § 87(2)(b), and he did not resist upon being handcuffed.
- PO Alba did not recall whether § 87(2)(b) said the word “faggot,” but said that while he and PO Broderick escorted § 87(2)(b) to the van, an unidentified passerby told PO Alba, “Suck my dick.” PO Alba told this individual, “Shut up, you shouldn’t be saying that,” but § 87(2)(b) seemed to believe that PO Alba was addressing him, and cursed at PO Alba in response. PO Alba could not recall exactly what § 87(2)(b) said.
- PO Alba and PO Broderick escorted § 87(2)(b) to the police van, and he resisted being placed therein. As the officers tried to lift § 87(2)(b) into the van, he kicked his legs. He kicked PO Alba in the leg a couple of times, and then kicked him in the groin area, causing substantial pain. PO Alba testified that this pain caused him to reflexively throw a punch at § 87(2)(b). After throwing the punch, PO Alba crouched down in pain. He later became aware that his punch landed on § 87(2)(b)'s face, although he did not see that happen. He did not notice any injury to § 87(2)(b) until he entered the van to transport § 87(2)(b) when he noticed blood on § 87(2)(b)'s face. PO Alba did not see § 87(2)(b)'s face or mouth hit any part of the van or any other surface, and believed that his punch caused § 87(2)(b)'s injury.
- PO Alba did not make any other physical contact with § 87(2)(b) besides the aforementioned punch.
- PO Alba did not call § 87(2)(b) an “asshole,” or tell him, “I’m gonna ride you around in the van, and I’m gonna beat your ass.” He did not use any profanity toward § 87(2)(b).

Witness Officer: PO JASON BRODERICK (Encl. 6A-F)

- On February 13, 2015, PO Broderick was interviewed at the CCRB (encl. 6D-F).
- PO Broderick corroborated that § 87(2)(b) seemed angry and intoxicated when he complained to the officers regarding the summons, and that his behavior drew a crowd.

- PO Broderick also corroborated that § 87(2)(b) resisted by kicking at him and PO Alba while they attempted to place him in the van. Out of the corner of his eye, PO Broderick observed § 87(2)(b)'s kicks make contact with PO Alba in the groin region. Although PO Broderick was not sure exactly how many times § 87(2)(b) kicked PO Alba, he said that it was several times.
- PO Broderick confirmed that PO Alba punched § 87(2)(b). He said that § 87(2)(b) was seated on the middle of three benches in the van when PO Alba punched him. PO Alba was in the space between the front seats and the first bench. PO Alba leaned over the first bench, and punched § 87(2)(b). PO Broderick originally said that PO Alba punched § 87(2)(b) in his general upper body, but later confirmed that the punch landed on § 87(2)(b)'s face. PO Broderick also confirmed that § 87(2)(b) was no longer kicking PO Alba when PO Alba punched him. To explain the timing of the punch, PO Broderick said that he did not believe that § 87(2)(b) was completely on the bench, and might have been lying on it, when PO Alba punched him. PO Broderick did not recall how many times PO Alba punched § 87(2)(b).
- PO Broderick did not hear PO Alba call § 87(2)(b) an “asshole,” or tell him, “I’m gonna ride you around in the van and I’m gonna beat your ass.”

Additional Officers

- On January 23, 2015 and February 13, 2015, Sgt. Delaney and PO Calderon, respectively, were interviewed at the CCRB (encl. 5A-F). They both further corroborated that when § 87(2)(b) approached the officers, he was loud and cursed at the officers, and his behavior drew a crowd. Neither Sgt. Delaney nor PO Calderon saw PO Alba punch § 87(2)(b) because they both conducted crowd control while PO Alba and PO Broderick escorted § 87(2)(b) to the police van. After the incident, PO Alba told Sgt. Delaney and PO Calderon that he punched § 87(2)(b) once after § 87(2)(b) had kicked him. Sgt. Delaney said that when he approached the van, § 87(2)(b) told him that PO Alba had struck him, and that PO Alba said that he did so after § 87(2)(b) had tried to kick him. PO Calderon said that PO Alba told him that § 87(2)(b) had kicked him in the groin area several times before PO Alba punched him. Neither Sgt. Delaney nor PO Calderon observed how § 87(2)(b) was injured, but later observed the laceration to his lip. They did not hear PO Alba call § 87(2)(b) an “asshole,” or tell him, “I’m gonna ride you around in the van, and I’m gonna beat your ass.”

Findings and Recommendations

Allegation A- Force: PO Wilson Alba used physical force against § 87(2)(b)

It is undisputed that PO Alba punched § 87(2)(b) in the lip at least once while § 87(2)(b) was handcuffed. However, the circumstance surrounding the punch and the number of times he punched § 87(2)(b) remain in dispute. Based on the officers’ consistent testimony regarding § 87(2)(b)'s resistance, PO Alba’s documentation of such in his memo book and § 87(2)(b)'s arrest report, § 87(2)(b)'s account that he felt frustrated with the officers, and the documentation of § 87(2)(b)'s intoxication in his medical records, the investigation determined by a preponderance of the evidence that § 87(2)(b) resisted arrest, specifically while he got into the van. It is not clear precisely where PO Alba was relative to § 87(2)(b) upon punching him, or when exactly the punch happened. § 87(2)(b) alleged that PO Alba punched him three times consecutively while he was being lifted into the van. Two punches landed on his lip, and one right above his right ear. PO Alba said that he punched § 87(2)(b) immediately after § 87(2)(b) kicked him in the groin. PO Broderick, the only nonparticipating witness to the punch,

stated that PO Alba punched § 87(2)(b) in response to being kicked, but leaned over the front bench inside the van to punch § 87(2)(b) who was seated on the van's middle bench. PO Broderick did not recall how many times PO Alba punched § 87(2)(b)

PO Alba acknowledged that his punch landed on § 87(2)(b)'s face, although he said that he was not aware of that until he got into the van and observed that § 87(2)(b)'s face was bleeding. PO Alba believed that his punch caused the injury to § 87(2)(b)'s arrest photograph shows swelling to his lip (encl. 3H). He was treated for a lip laceration and received stitches thereto.

Patrol Guide Procedure 203-11 mandates that police officers use only the minimum force necessary to overcome a suspect's resistance and effect a lawful arrest (encl. X).

§ 87(2)(g)

Allegation C—Force: PO Wilson Alba used physical force against § 87(2)(b)

Allegation D—Force: PO Jason Broderick used physical force against § 87(2)(b)

In addition to alleging that PO Alba punched him in the face three times, § 87(2)(b) said that the officers that escorted him to the van, determined by the investigation to be PO Alba and PO Broderick, pushed him into the van, causing his mouth to hit the van's floor and his bottom teeth to cut into his lower lip. PO Alba and PO Broderick denied that any such thing occurred, and none of the officers interviewed saw § 87(2)(b)'s head or face hit any surface.

§ 87(2)(g)

Allegation B-Discourtesy: PO Wilson Alba spoke rudely to § 87(2)(b)

Allegation E- Abuse of Authority: PO Wilson Alba threatened § 87(2)(b) with the use of force.

§ 87(2)(b) said that after he got in the van, PO Alba was "cursing him out," and "calling him all kinds of names," but he only specified that PO Alba called him an "asshole." He further alleged

that PO Alba told him, “I’m gonna ride you around in the van, and I’m gonna beat your ass.” § 87(2)(b) also described a moment at the beginning of his interaction with PO Alba when they “exchanged a few words,” during which § 87(2)(b) said, “You faggot.” § 87(2)(b) claimed that he made this remark out of frustration, and did not make it toward PO Alba. PO Alba did not recall whether § 87(2)(b) said the word “faggot,” but said that while he and PO Broderick escorted § 87(2)(b) to the van, an unidentified passerby told PO Alba, “Suck my dick.” PO Alba testified that he told this individual, “Shut up, you shouldn’t be saying that,” but § 87(2)(b) seemed to believe that PO Alba was addressing him, and cursed at PO Alba in response. PO Alba could not recall exactly what § 87(2)(b) said.

§ 87(2)(g)

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Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
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Reviewer: _____
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